



## ENVIRONMENTAL PROTECTION AGENCY

[FRL 9911-71-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Consent Decree; Request for Public Comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Sierra Club and the Natural Resources Defense Council in the United States District Court for the Northern District of California, in which several states have intervened as plaintiff-intervenors: Sierra Club et al. v. McCarthy, Civil Action No. 3:13-cv-3953-SI (N.D. Cal.). On August 26, 2013, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to take timely nondiscretionary action to promulgate and publish the remaining area designations for the 2010 revised primary national ambient air quality standard (“NAAQS”) for sulfur dioxide (“SO<sub>2</sub>”). The proposed consent decree would establish deadlines for EPA to take such action.

**DATES:** Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION DATE].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2014-0421 online at [www.regulations.gov](http://www.regulations.gov) (EPA’s preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding

legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Mike Thrift, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5596; fax number: (202) 564-5603; email address: [thrift.mike@epa.gov](mailto:thrift.mike@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The proposed consent decree would address a lawsuit filed by the Sierra Club and the Natural Resources Defense Council (“Plaintiffs”) seeking to compel the Administrator to take action to promulgate and publish remaining area designations for the 2010 primary SO<sub>2</sub> NAAQS under CAA sections 107(d)(1)(B) and 107(d)(2)(A), 42 U.S.C. 7407(d)(1)(B), 7407(d)(2)(A). Under the terms of the proposed consent decree, to which Plaintiffs and EPA are parties (the Plaintiff-Intervener states have not joined this consent decree), EPA would be required to complete area designations for the 2010 SO<sub>2</sub> NAAQS in three stages. First, on or before the date 16 months from the date of the consent decree, EPA will sign for publication in the Federal Register a notice of promulgation of such designations for remaining undesignated areas which:

(a) Based on air quality monitoring in the three full calendar years preceding such deadline have monitored violations of the 2010 SO<sub>2</sub> NAAQS; or (b) contain any stationary source that has not been “announced for retirement” and that, according to the data in EPA’s Air Markets Database, either (1) emitted more than 16,000 tons of SO<sub>2</sub> in 2012, or (2) emitted more than 2,600 tons of SO<sub>2</sub> and had an annual average emission rate of 0.45 lbs SO<sub>2</sub>/Mmbtu or higher in 2012; where

(c) “announced for retirement” means any stationary source in the United States with a coal-fired unit that as of January 1, 2010, had a capacity of over five megawatts and that has announced that it will cease burning coal at that unit through a company public announcement, public utilities commission filing, consent decree, public legal settlement, final state or federal permit filing, or similar means of communication. Second, on or before December 31, 2017, EPA will sign a notice of promulgation of such designations for remaining undesignated areas in which, by January 1, 2017, states have not installed and begun operating a new SO<sub>2</sub> monitoring network meeting EPA specifications referenced in EPA’s anticipated “Data Requirements Rule” rulemaking (proposed at 79 FR 27449 (May 13, 2014)) directing states to collect and analyze additional information regarding SO<sub>2</sub> emissions concentrations. Third, on or before December 31, 2020, EPA will sign a notice of promulgation of such designations for all remaining undesignated areas. In addition, the proposed consent decree arranges for payment to the Plaintiffs for the costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2014-0421) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA’s electronic public docket, EPA’s electronic mail (e-mail) system is not an “anonymous access” system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket.

Dated: May 23, 2014.

Lorie J. Schmidt,  
Associate General Counsel.

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